

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD P. McCREANOR and PEACE CORPS,
Washington, DC

*Docket No. 98-1457; Submitted on the Record;
Issued December 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a greater than six percent permanent impairment of his right elbow for which he has received a schedule award.

On March 13, 1996 appellant, then a 47-year-old Peace Corps volunteer/teacher, filed a claim for compensation alleging that he injured his right elbow in the performance of duty.¹

In a medical report dated March 6, 1996, Dr. Anthony S. Unger, appellant's treating physician and Board-certified in orthopedic surgery, advised appellant that "because of the degree of comminution and length of time that has occurred from the initial injury date," it would be difficult to reconstruct the elbow joint to an anatomic condition and that there was a possibility that he may develop post-traumatic arthritis.

In a medical report dated September 3, 1997, Dr. Unger stated that appellant had undergone an open reduction on March 14, 1996 and that he was examined on that day for final evaluation. He noted that, upon examination, appellant's right elbow revealed a lack of 15 degrees of full extension and a lack of 20 degrees of supination. Dr. Unger noted that appellant had full pronation and full flexion. He stated that appellant had sustained a comminuted severe right elbow fracture, had lost motion in his elbow and had a 10 percent right upper extremity impairment. Dr. Unger noted that there was a possibility that appellant may develop arthritis in the future. In a medical report dated November 13, 1997, he stated that examination revealed full flexion of the elbow, that he has full pronation and supination, but that he had tenderness over the olecranon and could not extend the elbow past 30 degrees. Dr. Unger noted post-traumatic arthritis of the right elbow joint and a narrowing of the ulnar humeral interval. He stated that in accordance with the American Medical Association, *Guides to the Evaluation of*

¹ Appellant was terminated on April 25, 1996 but, upon medical clearance, was reinstated in the Peace Corps and returned to Ethiopia in June 1996.

*Permanent Impairment*² appellant had a 6 percent loss for residual contracture of the right elbow and a 10 percent loss of the right upper extremity for post-traumatic arthritis of his elbow for a total of 16 percent loss of the right upper extremity.

On December 2, 1997 the Office of Workers' Compensation Programs referred appellant's medical record and a statement of accepted facts to Dr. George L. Cohen, an Office medical adviser Board-certified in internal medicine, for a determination regarding appellant's permanent partial impairment of his right elbow. The Office noted that it had accepted appellant's injury for right elbow fracture, right elbow reduction/internal fixation.

In a medical report dated December 9, 1997, Dr. Cohen stated that appellant had a six percent impairment of the right upper extremity. He noted that appellant had a 30 degrees flexion contracture and that x-rays revealed evidence of post-traumatic arthritis. Dr. Cohen also stated that appellant had full pronation and supination. Using the fourth edition of the A.M.A., *Guides* he stated that:

"Using figure 32, page 40 for extension to 30 degrees, there is a 3 percent impairment of the right upper extremity. Using table 15, page 54, for elbow pain, the maximum percent impairment is 5 percent. Table 11, Grade 3, page 48 allows 60 percent for pain, which may interfere with activity. 60 percent of 5 percent results in 3 percent impairment due to pain. Using the combined values chart, page 322, 3 percent impairment due to pain combined with 3 percent due to abnormal motion results in 6 percent impairment of the right upper extremity."

In a decision dated January 5, 1998, the Office awarded appellant a schedule award of six percent based on the partial loss of use of the right arm. The award ran from July 1 to November 9, 1996 at 66 2/3 percent of appellant's pay rate.

The Board finds that appellant has no more than a 6 percent permanent partial impairment of the right elbow for which he has received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁴ including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.⁵

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁶ Neither the Act nor the

² Dr. Unger did not specify what edition of the A.M.A., *Guides* he referenced.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ 5 U.S.C. § 8107 (a).

regulations specify the manner, in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁷

In the present case, based on appellant's history of injury and physical examination, Dr. Unger opined that appellant had a 16 percent permanent impairment of the right upper extremity. However, he did not identify which edition of the A.M.A., *Guides* he referenced to justify his finding that appellant had a 16 percent permanent impairment of the right elbow. On the other hand, Dr. Cohen found that appellant had a 6 percent permanent impairment of his right upper extremity and justified his finding based on specific references to the appropriate provisions of the A.M.A., *Guides*. He stated that he evaluated appellant's range of motion against the standards as set out in the 4th ed. of the A.M.A., *Guides*, noting that in accordance with Figure 32, page 40 appellant had extension to 30 degrees, which resulted in a 3 percent impairment of the right upper extremity. By referencing Table 15, page 54, for elbow pain, Dr. Cohen properly found that the maximum percent impairment was 5 percent and that Table 11, Grade 3, page 48 allowed 60 percent for pain may interfere with activity. He properly determined that 60 percent of 5 percent resulted in a 3 percent impairment due to pain. Dr. Cohen then properly relied on the Combined Values Chart, page 322, to combine 3 percent impairment due to pain with 3 percent due to abnormal motion to find a total 6 percent impairment of the right upper extremity. As the Office medical adviser's determination of appellant's impairment is the only medical evidence, which complies with the A.M.A., *Guides*, the Office properly based its schedule award decision on the medical adviser's evaluation. There is no medical evidence of record, correctly based on the A.M.A., *Guides*, which establishes that appellant has a greater than six percent permanent impairment of the right elbow.

⁷ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

The January 5, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 28, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member